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Honorable Judge Samuel J. Steiner
DATE: March 11, 2011
TIME: 9:30 a.m.
Chapter 11
LOCATION: Seattle
RESPONSE DUE: March 10, 2011

UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re: Adam R. Grossman, Debtor.	IN CHAPTER 11 PROCEEDING NO. 10-19817 DEBTOR'S REPLY TO CHAPTER 11 TRUSTEE'S OBJECTION TO DEBTOR'S MOTION TO CONVERT CHAPTER 11 CASE TO CHAPTER 13

Adam R. Grossman ("Debtor") hereby replies to the Chapter 11 Trustee Ronald G. Brown's (the "Trustee") Objection to Debtor's Motion to Convert Chapter 11 Case to Chapter 13 (the "Motion to Convert to 13").

There is very little case law on Conversion of Chapter 11 Cases to Chapter 13 other that simply the statute at 11 U.S.C. § 1112(d). However, the very large body of case law on conversion of other cases from one chapter to another all focuses on whether conversion or dismissal is in the best interests of the creditors. It is important to note that no creditor has

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objected to Debtor's Motion to Convert to Chapter 13. The only objecting party is the Trustee. At no point in any of the pleadings filed by the Trustee in Response to Debtor's Motion to convert does the Trustee state how his competing motion to covert this case to a chapter 7 is in the best interests of the creditors.

I. Debtor Does Object to the Chapter 11 Trustee's Motion to Convert this case from Chapter 11 to Chapter 7

In the Chapter 11 Trustee's Objection to Debtor's Motion to Convert from Chapter 11 to Chapter 13, the Trustee incorrectly states that "The debtor does not really object to the Trustee's Motion to convert the case from a Chapter 11 to a Chapter 7 ("Trustee's Motion") other than to say he would prefer that the case be converted to a chapter 13. Trustee's Objection to Debtor's Motion to Convert Case from Chapter 11 to 13 (Brown's "Objection"), page one, lines 16-18. This is not correct. Debtor does object to converting this proceeding to a Chapter 7, which is why Debtor filed the above-mentioned Debtor's Objection to the Trustee's Motion to Convert to Chapter 7. (docket no. 110).

What Debtor did say in his Objection is that Debtor agrees that he should not be in a Chapter 11 proceeding. Debtor's Objection to the Trustee's Motion to Convert to Chapter 7, page 2, lines 7-9. In light of Debtor's Motion to Convert to 13, Debtor's statement about not wanting to be in a Chapter 11 is clearly not in agreement with the Trustee's Motion to Convert to a Chapter 7.

II. Debtor did not claim that his former spouse was *awarded* the debt on 6821 - 39th Ave., NE; Debtor instead stated that his former spouse was initially, has always been and still is the sole obligor on that loan.

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Further, Debtor's 2nd Amended Schedule D does not purport to re-allocate debt based on any changes in Debtor's financial picture as a result of Debtor's Dissolution.

Debtor is not, as the Trustee would have this Court believe, claiming that his debts have been altered by the divorce decree in such a way that his is suddenly 'now" eligible to file a chapter 13. As stated in the Declaration of Debtor re: his 2nd Amended Schedule A&D filed on March 3, 2011, the 2nd Amended Schedule D shows what his secured debts were on August 19, 2010, the filing date for this petition. The 2nd Amended Schedule A&D do not purport to show debts and assets as of now, after the divorced decree and property awards. Declaration of Debtor re: his 2nd Amended Schedule A&D, page 1, lines 21-23.

In the Declaration of Adam R. Grossman ("Debtor") filed in support of his Motion to Convert to 13 (docket no. 111), he acknowledges that at the outset of this case, he incorrectly listed the 6821 debt among his secured creditors but that "as became clear in my King County Superior Court dissolution proceeding, my former spouse was the sole obligor on the loan (Deed of Trust) for 6821 – 39th Ave. NE." Declaration of Debtor filed in support of his Motion to Convert to 13, page 1 line 27 – page 2, lines 1-2. The operative word is "was." Debtor did not state that the 6821 debt *became* her separate debt as a result of the divorce proceeding, but rather that the 6821 debt was his ex-spouses sole obligation to begin with and remains so now. The Trustee is correct where he claims that "there is no language indicating that the lender has to release the husband from his contractual obligation. The debtor has not produced a release." Trustee's Objection, page 2, lines 19-21. However, the Trustee is correct only because *Debtor was never liable on that loan* in the first place, thus there both was and is no debt on the 6821 property from which to release the Debtor. Thus

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the Trustee is incorrect in his statement that "the debtor does remain liable on the $605,000 obligation to Citi Mortgage." Trustee's Objection, page 2, line 21.

The claims of the Trustee notwithstanding, regarding the 20710 Glennwood Drive, Debtor did not via his 2nd Amended Schedule A&D state or schedule that the $300,000.00 debt that was (incorrectly) listed as a secured debt to the Bugni Law Firm, had, by the divorce decree, been awarded to his former spouse. Trustee's Objection, page 2, lines 22-24. It is not entirely clear to Debtor or his counsel where this claim by the Trustee comes from. The $300,000.00 secured loan on the Glennwood Drive property is still on Debtor's 2nd Amended Schedule D; that debt is no longer listed on Schedule D as owing to the Bugni Law Firm but the debt is still listed; it is now correctly listed as owing to Lyman Opie with a corrected principal debt amount of $225,000 (excluding interest). No $300,000.00 debt (secured or otherwise) was ever owed to the Bugni Law Firm. The actual Debt to the Bugni Law firm ($10,000.00; unsecured) was correctly listed on Debtor's Amended Schedule F (docket no. 39) filed on October 28, 2010. See Declaration of Adam Grossman in Support of Debtor's Reply to the Trustee's Objection to Debtor's Motion to Convert from Chapter 11 to Chapter 13.

The same issue applies to the $16,000.00 debt that was formerly on Schedule D listed as a secured debt owing to Beth Shalom Preschool. As above with the Bugni Law Firm debt, a $10,000.000 debt to the Beth Shalom Preschool was correctly listed on Debtor's Amended Schedule F (docket no. 39) filed on October 28, 2010 and erroneously listed as owing to the Preschool on Debtor's prior Schedule D. There is no secured debt on the 773 Metro property for $16,000.00.

The Trustee is incorrect when in his Objection to my Motion to convert to Chapter 13,

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he claims that my debt schedules are inaccurate because the debt listed at the time of the filing does not correspond to the (higher) amount shown on the Deeds of Trust. The discrepancy is not because my 2nd Amended Schedule D is inaccurate but because not all principal was borrowed and accumulated interest was not included in the reported debt owed as of the date of filing.

Accordingly, the Debtor was, on August 19, 2010, and is still now well within the allowable secured debt limits in order to be eligible to file under Chapter 13.

III. Debtor now has sufficient income to fund a chapter 13 Plan.

Debtor has been self-employed since 1992 with one minor period of W2 income. For over 1.5 years, Debtor have been engaged in a very contested divorce, which lasted from April 15, 2009 to December 14, 2010 and is now being appealed. Debtor's business losses are not systematic but idiosyncratic to periods of limited ability to conduct business. It was Debtor's divorce that has caused huge losses and this period is not the norm. Declaration of Adam Grossman in Support of Debtor's Reply to the Trustee's Objection to Debtor's Motion to Convert from Chapter 11 to Chapter 13, page 4, lines 17-25, page 5, lines 1-4.

Debtor now has a position that will provide sufficient income to cover a chapter 13 plan's monthly payments. Id.

Debtor's total annual compensation will be in the neighborhood of $72,000.00. Id.

IV. The Trustee does not 'become' the Debtor for purposes of 11 U.S.C. § 1112(d).

While it is true that the Chapter 11 Trustee can stand in the shoes of a Chapter 11 Debtor (i.e. 11 U.S.C.A. § 541 actions), the Chapter 11 Trustee does not 'become' the

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Debtor. The Debtor is still free to file Motions on his own behalf as Debtor has done here. There is no statutory requirement of consent by a Chapter 11 Trustee in § 1112(d) conversion motions. The Chapter 11 Trustee's duty is to obtain the best outcome (the "best interests") possible for the creditors.

VI. Upon Conversion to Chapter 13, the Chapter 13 Trustee and this Court will still have authority over both this case and the Debtor.

Upon conversion to Chapter 13, the Chapter 13 Trustee will still have power to ascertain that Debtor is using good faith and reporting accurately in Debtor's activities and filings.

Therefore, the Debtor having answered and addressed each of the Objections raised by the Trustee in his Objection and the Trustee not having shown how conversion to Chapter 7 serves the best interests of the creditors, and,

WHEREFORE, based on the facts, statutes, and case law set forth hereinabove, the Court should grant Debtor's Motion to Convert this Case from a Chapter 11 case to Chapter 13.

DATED this 10th day of March, 2011.

/s/ Matthew D. O'Conner

Matthew D. O'Conner, WSBA #27061
Attorney for Debtor

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